**BEFORE THE APPEALS BOARD**
**FOR THE**
**KANSAS DIVISION OF WORKERS COMPENSATION**

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| **STEPHEN M. FLEMING** | ) | |
| Claimant | ) | |
| VS. | ) | |
| | ) | Docket No. 244,331 |
| **RIDGEWAY CONTROLS, INC.** | ) | |
| Respondent | ) | |
| AND | ) | |
| | ) | |
| **COMMERCIAL UNION INSURANCE COMPANY** | ) | |
| Insurance Carrier | ) | |

## ORDER

Respondent and its insurance carrier requested review of the Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler on July 13, 1999.

## ISSUES

The issues for Appeals Board review are:

1. Whether claimant failed to provide respondent with notice of accidental injury within the time required by K.S.A. 44-520.

2. Whether claimant sustained injury by accident that arose out of and in the course of his employment with respondent.

3. Whether the Kansas Act applies to this claim.

## FINDINGS OF FACT

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

1. Claimant has been a journeyman pipe fitter since 1967 or 1968. Claimant began working for respondent on December 7, 1998, after respondent contacted claimant's union hall. His pipe fitter job with respondent required him to work at job sites in both Kansas and Missouri.

2. Claimant described having problems with pain and numbness in his hands throughout the course of his work with respondent but in particular during his work with half inch conduit at a job site in Kansas City, Missouri. He testified that during this period the hand pain

became "profound". Although he attributed this pain to the work he was doing for respondent, claimant also testified that until he spoke with a physician he considered it to be the result of age or arthritis. Claimant did not miss work due to this condition. He continued working until the job ended on February 26, 1999. After this lay-off claimant went on his own to Dr. Craig C. Newland who sent him to Dr. Fred L. Sachen for an EMG on April 5, 1999. It was not until after this testing was completed and carpal tunnel syndrome was diagnosed that claimant was advised the condition was caused by work.

3. The medical records introduced show a history of gradual onset of pain due to repetitive use and specify the cause of claimant's condition as work activities. He was first given work restrictions and taken off work after the EMG on April 5, 1999. Claimant called and notified respondent the next day or the day after that, April 6 or 7, 1999.

## CONCLUSIONS OF LAW

Respondent contends claimant failed to provide timely notice of his accidental injury. K.S.A. 44-520 requires notice of accidental injury be given to the employer within 10 days. The time for giving notice can be extended up to 75 days for just cause. Just cause is the issue here.

In another case, the Board said:

> When dealing with injuries that are caused by overuse or repetitive micro-trauma, it can be difficult to determine the injury's cause. It is also often difficult to determine the injury's date of commencement and conclusion. In those situations, injured workers should not be held to absolute precision when considering the requirements of notice and written claim. The test should be whether the employer was placed on reasonable notice of a work-related injury.[1]

Some of the factors the Board has considered in determining whether just cause exists are:

> (1) The nature of the accident, including whether the accident occurred as a single, traumatic event or developed gradually.
> (2) Whether the employee is aware they have sustained either an accident or an injury on the job.
> (3) The nature and history of claimant's symptoms.
> (4) Whether the employee is aware or should be aware of the requirements of reporting a work-related accident, and whether the respondent has posted notice as required by K.A.R. 51-13-1 (now 51-12-2).[2]

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[1] Pope v. Overnite Transportation Company, WCAB Docket No. 237,559 (June 1999).

[2] Russell v. MCI Business Services, WCAB Docket No. 201,706 (October 1995).

Respondent contends claimant knew he was injured and attributed his injury to his work duties long before he gave notice. Claimant counters that he was able to continue working and did not know the precise cause for his pain or the severity of his injury until he saw the doctor. In addition, claimant's uncontradicted testimony is that respondent did not inform him of any requirement to report injuries.

Based primarily upon claimant's testimony that he did not suffer a specific traumatic event, that his condition progressively worsened until he was no longer performing his job, and that he was not aware of a work-related injury until so advised by his doctor, the Appeals Board finds claimant has established just cause for his failure to report his injury within 10 days. The Appeals Board also finds that it is more probably true than not that claimant suffered a series of accidental injuries or aggravations. Therefore, the date of accident for determining the timeliness of the notice is February 26, 1999, the last day claimant worked.[3] Based upon that accident date, claimant has satisfied the 75-day limit in K.S.A. 44-520 where there is a finding of just cause for not reporting the accident within 10 days.

The Appeals Board finds claimant has proven a work-related injury from a series of mini-traumas beginning approximately December 7, 1998 and continuing each and every working day up through his last day worked on or about February 26, 1999. As the work that caused claimant's injury was performed in part in Kansas, the Kansas Act applies to this claim.[4]

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the July 13, 1999 Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this ____ day of November 1999.

BOARD MEMBER

c: Ryan T. Linville, Kansas City, MO
Gary R. Terrill, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director

[3] Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

[4] Graff v. Trans World Airlines, Docket No. 82,148 (Kan. 1999).